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5-8-04

1 **I. INTRODUCTORY COMMENTS**

2 **RESPONSE TO EXAMINER'S ACTION OF AUGUST 16, 2000**

3 The Examiner's Action of August 16, 2000, refused entry a substitute  
4 specification filed April 11, 2000. Your applicant now files a substitute specification for  
5 application 09/041,685, entitled A LAMINAR FLOW INTERACTIVE OR VERTICAL  
6 VORTEX BIO MEDIA WATER TREATMENT DEVICE. The substitute specification,  
7 the claim amendments and the remarks are believed responsive to the Final Office Action  
8 dated August 16, 2000, to the Examiner's Advisory Action of April 16, 2003 and to  
9 comments by the Examiner during teleconferences between counsel and the Examiner.  
10 Examiner stated that the substitute specification filed April 11, 2000 was not entered  
11 because it did not conform to MPEP 608.01(q) which requires the submission of a  
12 marked-up copy which shows additions to and/or deletions from the original specification  
13 and that said proffered substitute specification did not conform to 35 CFR 1.125 which  
14 requires that applicants certify that there is no new matter, and moreover, that the  
15 specification was not entered because it was deemed by the Examiner to be replete with  
16 new matter.

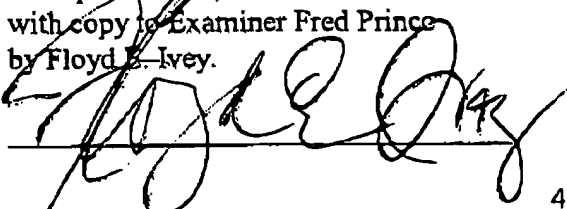
17 Your applicant submits the following as a substitute specification flowing from  
18 the reordering of that which was submitted as the original application and the addition of  
19 text in the Specification flowing from the specification, drawings, claims as originally  
20 submitted, added claims 10-29 and new claims.

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22 **AMENDMENT, SUBSTITUTION AND CLAIMS FORMAT**

23 The amendments and substitution pages are submitted in the new format. Hence,  
24 for each amendment to each distinct section of the application, a separate sheet will be

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26 Certificate of facsimile Official Filing  
27 on September 21, 2003 to Office of Petitions  
28 with copy to Examiner Fred Prince  
by Floyd E. Ivey.

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1 employed per the new format. Separate sheets will be commenced for a.) Introductory  
2 Comments; b.) Amendments to the Specification; c.) Amendments to the Claims; and d.)  
3 Remarks. It is observed that for claims, all claims will be displayed where any  
4 amendment is made to any claim. Amendments to claims shall be shown by strike  
5 through for deletions and underlining for additions. Amendments to the specification will  
6 be by strikeout and underlining. No separate "clean" version is provided for either  
7 amendments to claims or specification. In this Continuing Application, Request for  
8 Reconsideration and Petition to the Commissioner and Response to the Examiner's  
9 action, the application is set forth as a substitute application. The source supporting each  
10 amendment to either claims or specification is from that originally submitted with the  
11 original application re: specification and claims and as derived from an examination of  
12 the drawings.

#### CERTIFICATION OF NO NEW MATTER

15 Pursuant to 37 CFR 1.125, it is certified that no new matter has been added by this  
16 submitted substitute specification. The substitute specification is submitted in a marked  
17 up format. The additional text is drawn from a review of the drawings as originally  
18 submitted comprising Figures 1 through 11. Deriving additional description of the  
19 invention from the drawings is recognized as proper and it is contended here that no new  
20 matter has been added.

21 The test of the right to make counts is to be found in the total disclosure. Thus, the  
22 omission of a written description in the specification of an application will not  
23 necessarily prevent the reading of a count on a structure shown in the drawing and  
24 described in general terms in the specification. Here, the function of the disclosed  
25 structure is inherent in the structure shown in the drawings forming a part of the  
26 application. *Woofster v. Carlson*, 367 F.2d 436, 441, Cust. & Pat.App. 1966;

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1 *Carlson v. Nagata*, 480 F.2d 1372, 1375-76 ; Cust. & Pat.App.,1973

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3 The inventors are Max V. Weiss, 407 Skidoo Bay, Polson, Mt. 59860 and Terry J.  
4 CULLINAN, P.O. Box 2725, Missoula, Mt. 59806 are as disclosed in the original  
5 application.

6  
7 A new Declaration was filed March 20, 2003 in accordance with the requirements  
8 of the Examiner.

9 This **REQUEST FOR CONSIDERATION OF THE DISMISSAL OF THE**  
10 **PETITION FOR REVIVAL AND CONTINUING APPLICATION IS**  
11 **ACCOMPANIED BY A RESPONSE TO THE LAST OFFICE ACTION OF**  
12 **AUGUST 16, 2000 is being filed by facsimile transmission to FACSIMILE #703-308**  
13 **6916 with a copy to Examiner Prince at fax 703 872 9709; telephone number 703 306**  
14 **9169.**

15  
16 *Filing on 9/22 is timely as it*  
17 *is on the next business day following*  
18 *the anniversary date*  
19 *of the Dismissal*  
20 The applicant respectfully observes that your applicant made payment of \$650 for  
21 a small entity, on March 20, 2003, and that the PTO 2038 form for payment by Credit  
22 Card was included with that prior transmission. Your applicant respectfully observes that  
23 this filing is in the third month with respect to the dates set by either the Examiner's  
24 Advisory Action of April 16, 2003 or the Dismissal of April 21, 2003 and requests

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1 Extension in Filing within the third month with the fee for extension comprising \$465.  
2 Additionally, the fee for a Continuing Application is \$375 payable. Fees totaling \$840.00  
3 are now submitted via the PTO 2038 forms for payment by Credit Card which are  
4 included with this transmission. The Office of Petitions will find PTO 2038  
5 authorization for \$420.00 for Mr. Cullinin and PTO 2038 authorization for \$420.00 for  
6 Mr. Weiss.  
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